

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

MICHAEL C. MCINTYRE and CAROL G.  
MCINTYRE,

Plaintiffs,

v.

MARRIOTT INTERNATIONAL, INC.,  
MARRIOTT OWNERSHIP RESORTS,  
INC., and MARRIOTT RESORTS TITLE  
COMPANY, INC.,

Defendants.

**CASE NO.: 9:13-cv-80184-RNS**

**AMENDED CLASS ACTION  
COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiffs Michael C. McIntyre and Carol G. McIntyre, by their undersigned attorneys, bring this amended class action complaint against Marriott International, Inc. (“Marriott”), Marriott Ownership Resorts, Inc. (“MORI”), and Marriott Resorts Title Company, Inc. (“Marriott Title”) (collectively the “Marriott Defendants”). Plaintiffs’ allegations are based upon knowledge as to their own acts and upon information and belief as to all other matters. Plaintiffs’ information and belief is based upon, among other things, investigation undertaken by their attorneys.

**NATURE OF THE ACTION**

1. This is a class action against the abovementioned Defendants for violations of the Florida Unfair Trade Practices Act (“FDUTPA”), §§ 501.201, Fla. Stats., *et seq.*, violations of the Florida Vacation and Timeshare Act, §§ 721.01, Fla. Stats., *et seq.*, (“FVTA”), and unjust enrichment. Plaintiffs and members of the class they seek to represent are all current or past owners of timeshare interests at MORI-owned timeshare properties in the State of Florida who, upon representations that title insurance was a necessary and required component of a timeshare

purchase, obtained First American Title Insurance Company policies on their timeshare purchases through Marriott Title.

2. As alleged herein, the Marriott Defendants have, and continue to, take advantage of their unwitting consumers, including Plaintiffs and members of the proposed class, to a grossly unfair degree by, *inter alia*, representing that title insurance is a necessary and required component of a timeshare purchase, despite the transfer of a Special Warranty Deed from the developer/guarantor, MORI, to the Plaintiffs, rendering the title insurance policy useless.

3. Although the Marriott Defendants require title insurance for each and every timeshare purchase, the Special Warranty Deed conveyed to Plaintiffs and members of the proposed class guarantees that the conveyance is free of all liens, claims, and encumbrances not on record at the time of conveyance. Likewise, the title insurance policies obtained by Plaintiffs and members of the proposed class insure title to the timeshare interest against all liens, claims, and encumbrances not on record at the time of conveyance.

4. Given the redundant nature of the protections conveyed by the Special Warranty Deed and the title insurance policies obtained, Plaintiffs and members of the class cannot be presented with an opportunity to utilize the title insurance policy, despite being required by the Marriot Defendants to purchase the same.

5. Plaintiffs, on their own behalf and as representatives of the class, seek to recover compensatory damages in the amount of the purchase price of the title insurance policies purchased due to the Marriott Defendants' representations.

6. In addition, Plaintiffs seek injunctive relief, including, but not limited to an order directing: (a) cessation of the wrongful and deceptive practices; (b) implementation of

administrative changes designed to remedy current and future problems; and (c) improved disclosure to current and prospective timeshare purchasers.

### **JURISDICTION AND VENUE**

7. This Court has diversity subject-matter jurisdiction over this class action pursuant to the Class Action Fairness Act of 2005, Pub. L. No. 109-2 Stat. 4 (“CAFA”), which, *inter alia*, amended 28 U.S.C. § 1332, with new subsection (d), conferring federal jurisdiction over class actions where, as here: (a) there are 100 or more members in the proposed Class; (b) at least some members of the proposed Class have a different citizenship from the Marriott Defendants; and (c) the claims of the proposed Class members exceed the sum or value of five million dollars (\$5,000,000) in the aggregate. *See* 28 U.S.C. § 1332(d)(2).

8. This Court has personal jurisdiction over the Plaintiffs because they submit to the jurisdiction of the Court.

9. This Court has personal jurisdiction over Marriott because it regularly transacts business within the State of Florida through its wholly-owned subsidiary MORI.

10. This Court has personal jurisdiction over MORI because it is headquartered in the State of Florida, transacts business within the State of Florida, and by virtue of the fact that MORI’s executive offices are located in the State, MORI systematically and continually conducts business throughout the State.

11. This Court has personal jurisdiction over Marriott Title because it is incorporated under the laws of Florida, transacts business within the State of Florida, and by virtue of the fact that Marriott Title’s executive offices are located in the State, Marriott Title systematically and continually conducts business throughout the State.

12. Venue is proper because the Amendment to Contract for Purchase (attached hereto as Exhibit A) stipulates that all disputes regarding the same shall be governed by the laws of the State of Florida and the venue shall be in Palm Beach County, Florida.

### **PARTIES**

13. Plaintiffs Michael C. McIntyre and Carol G. McIntyre are husband and wife and are residents of New Jersey. Plaintiffs have purchased several timeshare properties from MORI, namely a March 3, 2009 purchase of a timeshare interest at Oceana Palms - a MORI-owned condominium resort located in the State of Florida. Plaintiffs financed the purchase amount of \$38,900.00 and were required by MORI to purchase title insurance on that timeshare interest.

14. Defendant Marriott International, Inc. ("Marriott") is a Delaware corporation with its headquarters at 10400 Fernwood Road, Bethesda, Maryland, 20817. According to its website, Marriott employed approximately 137,000 individuals and reported nearly \$11 billion in sales from continuing operations during the 2009 fiscal year. In the first quarter of 2012, Marriott reported a net income totaling \$104 million. Marriott holds more than 3,400 lodging properties in 68 countries and territories, and operates and franchises hotels under the brand names: Marriott, JW Marriott, The Ritz-Carlton, Renaissance, Edition, AC Hotels, Residence Inn, Courtyard, TownePlace Suites, Fairfield Inn, Spring Hill Suites, Autograph Collection, and Bulgari. In addition to Marriott's hotel operations, Marriott also licenses and manages the whole-ownership residential brands The Ritz-Carlton Residences, JW Marriott Residences, and Marriott Residences; operates the Marriott Executive Apartments brand; operates the Marriott ExecuStay brand providing furnished corporate housing; and operates conference centers. Among its numerous operations, Marriott also develops and operates vacation ownership resorts under the brand names: Marriott Vacation Club, The Ritz-Carlton Destination Club, and the

Grand Residences by Marriott. Marriott manages its domestic vacation ownership, or timeshare, properties through its wholly-owned subsidiary, Defendant Marriott Ownership Resorts, Inc., d/b/a Marriott Vacation Club International.

15. Defendant Marriott Ownership Resorts, Inc., d/b/a Marriott Vacation Club International (“MORI”) is a Delaware corporation and wholly-owned subsidiary of Defendant Marriott International, Inc. MORI maintains its principle place of business at 6649 Westwood Boulevard – Suite #500, Orlando, Florida, 32821. MORI is responsible for managing Marriott’s domestic timeshare operations. MORI develops and owns Marriott’s domestic timeshare properties and sells timeshare interests in those properties to Plaintiffs and members of the Class.

16. Defendant Marriott Resorts Title Company, Inc. (“Marriott Title”) is a Florida corporation and wholly-owned subsidiary of Defendant MORI. Marriott Title’s principle place of business is located at 6649 Westwood Boulevard – Suite #500, Orlando, Florida, 32821. Although MORI does not expressly require the use of Marriott Title as closing agent for a MORI timeshare purchase, Marriott Title acts as the closing agent unless the purchaser expressly requests otherwise.

### **CLASS ACTION ALLEGATIONS**

17. Plaintiffs bring this class action on their behalf and on the behalf of all similarly situated MORI timeshare purchasers who financed the purchase of a MORI timeshare interest while in the State of Florida and who purchased title insurance on that timeshare interest from December 28, 2008 through the present.

18. Plaintiffs, by virtue of their experiences and damages suffered as MORI timeshare purchasers, are representatives of the Class.

19. This action is properly maintainable as a class action.

20. The class is so numerous that joinder of all members is impracticable.

21. The number and identity of class members can be easily determined from the records maintained by the Marriott Defendants and/or their agents. The disposition of their claims in a class action will be of benefit to the parties and to the Court.

22. A class action is superior to other methods for the fair and efficient adjudication of the claims herein asserted, and no unusual difficulties are likely to be encountered in the management of this action as a class action. The likelihood of individual class members prosecuting separate claims is remote.

23. There is a well-defined community of interest in the questions of law and fact involved affecting members of the Class. Among the questions of law and fact which are common to the Class, and which predominate over questions affecting individual class members are the following:

- a. Whether the Marriott Defendants violated the Florida Deceptive and Unfair Trade Practices Act by representing title insurance as a necessary and required component of a timeshare purchase;
- b. Whether the Marriott Defendants violated the Florida Vacation and Timeshare Act by misrepresenting the necessary nature of a title insurance policy and the quality of the Special Warranty Deed conveyed;
- c. Whether the Marriott Defendants breached common law covenants with Plaintiffs and members of the Class by, *inter alia*, representing that title insurance was necessary and requiring the same for a timeshare purchase; and

- d. Whether, and to what extent, Plaintiffs and members of the Class have been damaged by the Marriott Defendants' conduct and the proper measure of damages.

24. Plaintiffs are members of the Class and are committed to prosecuting this action. Plaintiffs have retained competent counsel experienced in litigation of this nature. Plaintiffs' claims are typical of the claims of other members of the Class in that they are seeking compensatory damages for the Marriott Defendants' conduct as alleged herein, the same claims being asserted on behalf of each individual member of the respective class. Plaintiffs are, therefore, adequate representative of the Class as described herein.

25. The likelihood of individual Class members prosecuting separate individual actions is remote due to the relatively small loss suffered by each Class member as compared to the burden and expense of prosecuting litigation of this nature and magnitude. Absent a class action, the Marriott Defendants are likely to avoid liability for their wrongdoing, and the members of the class are unlikely to obtain redress for the wrongs alleged herein.

26. Adjudication of this case on a class-wide basis is manageable by this Court. The contracts that were entered into by Plaintiffs and each Class member through the State of Florida are the same or so similar as to be legally and factually indistinguishable in all material respects, and under the terms of the said contracts, Florida law is to be applied to disputes arising thereunder. As a result, it will not be difficult for the Court or the jury to determine whether the Marriott Defendants have violated FDUTPA, FVTA, and common law covenants. This Court is an appropriate forum for this dispute.

**FACTUAL ALLEGATIONS**

27. As described above, Marriott is a dominant player in the timeshare industry, managing over 10,000 timeshare units. Marriott's wholly-owned subsidiary, MORI, is responsible for Marriott's domestic timeshare operations and is the entity that owned and sold the timeshare interest to Plaintiffs. Marriott Title, MORI's wholly-owned subsidiary, purported to act as Plaintiffs' closing agent to procure Plaintiffs' title insurance from First American Title Insurance Company.

28. Plaintiffs purchased a Marriott timeshare, located at Oceana Palms, a MORI-owned condominium resort located at 3200 N. Ocean Dr., Riviera Beach, Florida 33404 (the "Timeshare") on March 3, 2009.

29. When purchasing the Timeshare, the Marriott Defendants required that Plaintiffs procure title insurance in order for Plaintiffs to purchase the Timeshare itself and to receive the benefits of participation in Marriott's "Timeshare/Marriott Rewards Program."

30. Representations regarding the necessary and required nature of title insurance for the Timeshare were made during the sales presentations regarding the purchase of the Timeshare and the procedures that would follow through closing. The presentations, delivered by representatives of the Marriott Defendants, are substantially similar or identical to those made to all other purchasers of a Marriott timeshare property, including members of the proposed Class.

31. In addition to the verbal representations made by the Marriott Defendants, the Contract for Purchase between Plaintiffs and MORI further represents that title insurance is a necessary and required component in purchasing a Marriott timeshare interest. The Contract for Purchase, substantially similar or identical to the contracts prepared for all other purchases of Marriott timeshare properties, including members of the Class, states in relevant part:

Closing costs associated with the purchase, financing and conveyance of a timeshare estate, include, but are not limited to: cost of recording the deed, documentary stamp tax on the deed, *title insurance premiums*, document preparation fees, costs of recording the purchase money mortgage (if any), any sales tax on the aforescribed Common Furnishings Interest, and applicable intangible and documentary stamp taxes on the recording purchase money mortgage (if any).

A copy of the Contract for Purchase is annexed hereto as Exhibit A (emphasis added).

32. In obtaining the required title insurance, Plaintiffs did not expressly request the use of another closing agent; therefore, Marriott Title acted as closing agent as per the Contract for Purchase, which states:

[Marriott Title] shall act as closing agent, unless Purchaser requests a different closing agent, in which case Purchaser shall pay any increased closing costs as set forth under Paragraph III (front) in connection with using such closing agent.

*Id.*

33. By acting as closing agent, Marriott Title received a financial benefit in the form of fees collected from Plaintiffs. The collected fees, in turn, benefit MORI as owner of Marriott Title, which then benefits Marriott as owner of MORI.

34. The Contract for Purchase provides that MORI is the developer, owner, and seller of the Timeshare. Further, the Contract for Purchase provides that MORI shall convey title under a Special Warranty Deed, free and clear of all liens, claims, and encumbrances that are not of record at the time of closing. The Contract for Purchase reads:

Deliver to Purchaser its special warranty deed conveying title to the Timeshare Estate(s) purchased free and clear of all liens, claims, and encumbrances, except Purchaser's mortgage (if any), the terms and conditions of the Declaration, conditions, restrictions, covenants, reservations, limitations, zoning, and easements of record at the time of closing, taxes for the then current and subsequent years and liens created by actions of the Purchaser.

*Id.*

35. As expressed in the Contract for Purchase, the Special Warranty Deed stipulates:

The Grantor [MORI] fully warrants the title to said land, and will defend the same against the lawful claims of all persons claiming by, through or under said Grantor.

A copy of the Special Warranty Deed is annexed hereto as Exhibit B.

36. Title insurance is necessitated by the danger that a lien, claim, or encumbrance against a newly purchased property may surface despite a clear record check. As such, a representation that title insurance is a necessary and required component of a timeshare purchase indicates that such a lien, claim, or encumbrance may indeed one day surface.

37. Despite the Marriott Defendants' representations that title insurance is a necessary component in a MORI timeshare purchase, the quality of the Special Warranty Deed renders Plaintiffs' title insurance policy useless. Under the Special Warranty Deed, MORI guarantees that title to the timeshare interest is free of all liens, claims, or encumbrances not on record at the time of conveyance. Likewise, title insurance guarantees the title against all liens, claims, or encumbrances not on record at the time of conveyance. Therefore, upon conveyance of a Special Warranty Deed, MORI guarantees the title as free of any and all liens, claims, and encumbrances that are not on record at the time of conveyance while simultaneously requiring Plaintiffs and members of the Class to purchase a title insurance policy providing the same protections.

38. Given that both the title insurance policy and the Special Warranty Deed guarantee the title against all liens, claims, and encumbrances not on record at the time of conveyance, the only opportunity presented to Plaintiffs and members of the Class to utilize said policy is predicated by the Marriott Defendants' failure to provide the guarantees in the Special Warranty Deed. As such, the Marriott Defendants required Plaintiffs and members of the Class to purchase, often through Marriott Title, an insurance policy that replicates the protections

conveyed in the Special Warranty Deed. Given the identical protections afforded by both the title insurance policy and the Special Warranty Deed, title insurance is in fact unnecessary when purchasing a MORI timeshare interest. Rather, the policy is entirely useless to Plaintiffs and members of the Class.

## COUNT I

### *Florida Deceptive and Unfair Trade Practices Act*

39. Plaintiffs incorporate by reference and re-allege each and every allegation set forth above as though fully set forth herein.

40. Plaintiffs and Class members are “consumers” as defined by Florida Statute §501.203(7), and the subject transactions are “trade or commerce” as defined by Florida Statute §501.203(8).

41. FDUPTA was enacted to protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.

42. The Marriott Defendants falsely represented to Plaintiffs and members of the Class that title insurance was a necessary and required component of a timeshare purchase. Such representations were likely to mislead a reasonable consumer, and in making them, the Marriott Defendants have materially misled Plaintiffs and members of the Class.

43. Further, the Marriott Defendants’ representations and omissions of material facts regarding the necessity of title insurance directly harmed Plaintiffs and members of the Class.

44. Said misrepresentations and omissions were made during sales presentations and through written materials provided to Plaintiffs and members of the Class when purchasing a timeshare interest from MORI.

45. The Marriott Defendants' misrepresentations and omissions constitute violations of FUDTPA, § 501.204(1), Fla. Stats., which prohibits "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce...."

46. Due to the unnecessary and ultimately useless nature of title insurance on the Timeshare purchase, the Marriott Defendants' representations constitute unfair or deceptive actions resulting in a violation of FDUTPA.

47. Plaintiffs and the Class have been damaged as a result of Defendants violations of FDUTPA in that they incurred the costs for the useless title insurance.

48. As a direct and proximate result of the unconscionable, unfair, and deceptive acts or practices alleged herein, Plaintiffs and the Class members have been damaged and are entitled to recover actual damages to the extent permitted by law, including class action rules, in an amount to be proven at trial. In addition, Plaintiffs and the Class seek equitable relief and to enjoin Defendants on the terms that the Court considers reasonable, and reasonable attorneys' fees.

## **COUNT II**

### ***Florida Vacation and Timeshare Act***

49. Plaintiffs incorporate by reference and re-allege each and every allegation set forth in paragraphs 1 - 38 above as though fully set forth herein.

50. In making oral representations that title insurance is a necessary and required component of the Timeshare purchase, the Marriott Defendants violated section 721.11(4)(a), Florida Statutes, by misrepresenting both the necessity of title insurance and the quality of the Special Warranty Deed.

51. The Florida Vacation and Timeshare Act, § 721.11(4)(a), Fla. Stats., provides: “No advertising or oral statements made by any seller or resale service provider shall: ... [m]isrepresent a fact or create a false or misleading impression regarding the timeshare plan or promotion thereof.”

52. The Special Warranty Deed guarantees the conveyed title is free and clear of all liens, claims, or encumbrances not on record at the time of conveyance; therefore, any representations that title insurance is necessary are false. Further, title insurance protects title from any liens, claims, or encumbrances not on record at the time of conveyance; therefore, by representing that title insurance is necessary, the Marriott Defendants misrepresent the quality of the Special Warranty Deed.

53. As a direct and proximate result of the Marriot Defendants’ material misrepresentations concerning the necessary and required nature of title insurance, Plaintiffs and members of the Class have and will continue to suffer damages.

### **COUNT III**

#### ***Unjust Enrichment***

54. Plaintiffs incorporate by reference and re-allege each and every allegation set forth in paragraphs 1 - 38 above as though fully set forth herein.

55. Plaintiffs and the Class conferred a benefit on the Marriott Defendants by paying premiums and fees for the useless title insurance.

56. The Marriott Defendants have and continue knowingly to benefit by wrongfully charging premiums and fees, which, in all instances where Marriott Title is the closing agent, are collected to the benefit of Marriott Title, thereby benefiting MORI and Marriott.

57. As a direct and proximate result of the Marriott Defendants' conduct, Plaintiffs and members of the Class have been and continue to be deprived of the possession and use of the funds used to purchase the required title insurance. Therefore, the Marriott Defendants have been unjustly enriched.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for judgment and relief as follows:

- A. Declaring that this lawsuit is properly maintainable as a class action, certifying Plaintiffs as representatives of the class, and appointing undersigned counsel as attorneys for the class;
- B. Declaring that the Marriott Defendants violated the Florida Deceptive and Unfair Trade Practices Act;
- C. Declaring that the Marriott Defendants were unjustly enriched by their conduct;
- D. Awarding compensatory damages against the Marriott Defendants in an amount to be determined at trial, together with prejudgment interest at the maximum rate allowable by law;
- E. Ordering injunctive relief, including permanently enjoining and restraining the Marriott Defendants from engaging in the wrongful and deceptive practices complained of herein and ordering full disclosure of Defendants' actual practices, and the entry of such other orders as may be necessary or appropriate to restore to Plaintiffs and members of the Class, money acquired in violation of the FDTUPA.
- F. Awarding Plaintiffs and members of the Class their costs and disbursements and reasonable allowances for Plaintiffs' counsel and experts' fees and expenses; and

G. Granting such other and further relief as may be just and proper.

**DEMAND FOR TRIAL BY JURY**

Plaintiffs demand a trial by jury of all issues so triable.

Dated: March 1, 2013

Respectfully submitted,

/s/J. Andrew Meyer

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